

CONVOCAATION AND EDWARD DODD'S SHARE IN ITS REVIVAL

BY

J. THEODORE DODD, J.P.

M.A. CHRIST CHURCH, OXFORD
BARRISTER-AT-LAW

'To the law and to the testimony.'

ISAIAH viii. 20

*'Melius est petere fontes quam sectari
rivulos.'*

JUSTINIAN, INST.

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I

INTRODUCTORY

EDWARD DODD, the subject of this monograph, played an important part in the revival of Convocation in the middle of the nineteenth century. He was born at Wigton in Cumberland on January 25th, 1806, and was the fourth son of the Rev. John Dodd, then Vicar of Wigton, and afterwards of Newcastle-upon-Tyne, and of Mary his wife.¹

Edward was at school first at St. Bees and afterwards at Shrewsbury, and was admitted as a Pensioner (i.e. a Commoner) of Magdalene College, Cambridge, on May 31st, 1824. In January 1828 he took the Mathematical Tripos and was fifth Senior Optime, that is to say, was placed fifth in the Second Class. In the following month he took the Classical Tripos and was placed in the Third Class. Later in the same year he took his degree of Bachelor of Arts, and his name first appears as Smith Bye Fellow in the Calendar of 1829. In those days Magdalene had four Foundation Fellows, and a number of Bye Fellows on different foundations, who were commonly called Fellows. He was first entered in the University Calendar as M.A. in 1834—although according to Crockford's Directory he took his M.A. in 1830. He appears in the Calendar as Bachelor of Divinity in 1844. He continued to hold the position of Smith Bye Fellow until 1868, when his name appears in the Calendar for the last time. He died at the end of April 1868. According to Crockford he was made Vicar of St. Giles' and of the neighbouring tiny Church of St. Peter in 1844, his salary being £170.

Mr. Dodd began his studies in Ecclesiastical Law and History many years before the formation of 'the Society for Revival of Convocation', which held its first meeting on August 28th, 1851. His books, from Lyndwode's *Provinciale* downward, indicate how careful and deep were his studies. He was an inveterate annotator, both of books and legal documents of every kind; and he not infrequently expressed his assent or dissent in emphatic terms. His criticisms are to be found even on his printed copies of legal opinions, given by eminent counsel.

¹ Her maiden name was Carrick.

He fully believed in the Divine Institution of the Church; and held that it ought to be governed by its Bishops and Synods, and not by Bishops' or Archbishops' officials, nor by their Lay Ecclesiastical Judges.

In a pamphlet upon the Court of Arches entitled *Reform your Arches*, he spoke of the Church as 'Christ's visible and holy kingdom upon Earth',¹ which was a not unusual belief of High Churchmen in his day; and thus expressed himself in a short poem upon St. John the Baptist:

Repent, the Heavenly Kingdom is at hand !
And does John learn the mystery to scan
Of *Heavenly Kingdom* in the *Heart of man*—
Subserving that new glory bought with blood,
Christ's *Heavenly Kingdom* in the *Church of God*—
Which reaches on—with faith, and hope, and love,
To th' *Heavenly Kingdom* in the *Realms above* ? (p. 31).

His views were, in the main, those of the High Churchmen of his time, but the services at his churches were of the simplest character—and he used Simeon's Hymn-book in St. Giles'.

¹ Apparently this view was not held by any one before St. Augustine. See Bishop Walpole on the Kingdom of Heaven, pp. 8, 9, 38.

II

THE MUZZLING OF CONVOCATION, 1717-1852

To understand the recent great increase in the liberty of the Synods of the Church, it is necessary to describe their humiliating position before the change for the better in the middle of the nineteenth century, though not to discuss the powers of Convocation before the Submission of the Clergy and the Act of Submission in the reign of Henry VIII, or even to describe their powers, influence, and activity for some length of time after the Submission.

'At the Restoration the Lower House of Convocation deprived itself of future political importance by voluntarily surrendering its right of taxing the Church for State purposes. From 1664 onwards the House of Commons taxed the Clergy, and the Clergy were in return allowed to vote for Parliament.'¹

After a time, the organized Church became most truly a 'dumb dog'. It could neither bite nor bark, nor even sit up and beg.² It could not, according to the authorities, even petition the Crown to permit it to make a canon. All that Canterbury Convocation could do was to present a loyal address to the Crown, while York was sometimes prevented from taking even that mild form of action.

In 1717 Convocation³ was prorogued in pursuance of a Royal Writ; from that time till 1861 no licence was granted to Convocation to proceed to business. During this period it was usual for a few members of the Convocation to meet, when first summoned with every new Parliament in pursuance of the Royal Writ; for the Lower House to elect a prolocutor; and for both Houses to vote an address to the Crown, after which Convocation was prorogued from time to time, pursuant to Royal Writs, and ultimately discharged when the Parliament was dissolved. There were, however, several occasions between 1717

¹ *Blenheim*, by G. M. Trevelyan, p. 284. See also Trevor on The Two Convocations, p. 68.

² See pp. 4, 5, 14, 16, 18, 20, 32 below. As to York see pp. 5, 17-20, 28-31 below.

³ By 'Convocation' Canterbury is meant, unless it is otherwise stated or implied. York Convocation was muzzled till some years later.

and 1741 when the Convocation of the province of Canterbury transacted certain matters by way of consultation which did not require any licence from the Crown. But in 1741, the Lower House having declined to receive a communication from the Upper House, Convocation was forthwith prorogued; and from then until the middle of the nineteenth century, Convocation was not permitted by the Crown to enjoy any opportunity even for consultation.¹

The virtual silencing of Convocation was the direct result of the Bangorian Controversy. The Lower House was about to condemn a sermon and book by Bishop Hoadley. This alarmed the Government, which was also afraid that possibly the Upper House might agree. 'Therefore before the matter could be discussed in the Upper House, Convocation was quietly prorogued in May, 1717, by a somewhat arbitrary exercise of (the Royal Prerogative) and did not meet again for dispatch of business for 135 years.

'The method by which Convocation was silenced was very simple, viz: by withholding the customary royal letter or licence authorizing the two Houses to proceed to business. Convocation assembled as usual at the beginning of every Parliament, but having no authority to transact any definite business, its meetings were purely formal and nothing was done.'² Bishop Burnet says 'no business can be undertaken in Convocation unless it has been specially proposed to them by a Royal Licence'.³

Again, Burke in his letter to the Sheriffs of Bristol says of Convocation, 'It is now called for form only. It sits for the purpose of making some polite ecclesiastical compliments to the king and when that grace is said retires and is heard no more.'⁴

Thus it was supposed that, in consequence of the Act of Submission which forbids the Convocations to enact, promulgate,

¹ *Encyc. Brit.*, 11th edit., tit. 'Convocation'. Among the more recent authorities cited by the *Encyclopaedia* are: Trevor, *The Convocation of the Two Provinces*, 1852; Pearce, *The Laws relating to Convocations of the Clergy*; Cardwell's *Synodalia*, and Lathbury.

² Overton and Relton, pp. 18, 19.

³ *History of his Own Time*, quoted from Halsbury, vol. ii, p. 394 note.

⁴ I quote this from Phillimore's *Ecclesiastical Law*, vol. ii, 2nd edit., p. 1541, citing Burke, *Works*, vol. iii, p. 320, ed. 1852. It is stated by Phillimore that there was some relaxation about 1840. If this is correct the relaxation must have been very slight. In 1741-2 Convocation was allowed to meet for a short time and began to take some matters into consideration, id. 1540.

or execute without a licence from the Crown any canon,¹ they had no right even to confer upon a canon without a licence, though with the ultimate view of applying for a licence to make one; nor even liberty to deliberate on such things as may be fit to be done by them for the service of the Church, though without any idea whatever of framing or promulgating a canon.²

This humiliating position is briefly described by the present Bishop of Chichester:³ 'From 1717 to 1855 Canterbury, and from 1698 to 1861 York, Convocations were suppressed for all purposes of business.' Molesworth tells us⁴ that the Government caused a prorogation of Convocation 'with an intention not to summon it again, and in accordance with this resolution for upwards of a century it was merely called together as a matter of form, but was not allowed to deliberate.'

'I well remember', said Henry Hoare, 'the difficulty of disabusing counsel of such glosses on the Act of Submission as that of Archbishop Wake, quoted by Burn, and generally, at that time, believed in—to wit, that "the King, having, by authority of his writ, commanded the Archbishops to summon their Convocations for State purposes, *has it now in his own breast whether he will let them act as a Church Synod or no*". And that "*they are a Convocation by the writ of summons, but a Council, properly speaking, they are not; nor can legally act as such, till they have obtained the King's licence to do so*".⁵ From this and, some similar glosses of a more judicial but not less erroneous character, the clergy were held to have now no right to "confer" upon a canon without a licence, though with an ultimate view of applying for a licence to make one; nor even liberty to "deliberate of such things as may be fit to be done by them for the service of the Church," though without any idea whatever of framing or promulgating a canon.'⁶

¹ See pp. 8, 9 below.

² *A Brief Sketch of the Church of England*, by Dr. Bell, p. 105. See also *ib.*, p. 124.

³ The real battle which resulted in revival took place in November 1852: see p. 14 below.

⁴ *History of Church of England*, p. 295.

⁵ The italics are in Mr. Sweet's book.

⁶ Quoted from 'A Memoir of Henry Hoare with a Narrative of the revival of Convocation,' by his great friend and supporter the Rev. J. Bradby Sweet, p. 238.

It was Edward Dodd's researches which effectively proved that this supposed disability of Convocation to confer upon canons had no statutory foundation.¹

A good idea of the procedure followed in Canterbury Convocation until 1847 can be gained from the summary—which I have slightly abbreviated—of the entries in the Act Book of that Convocation for the year 1835-6 given in the *Life of Henry Hoare*, by J. Bradby Sweet (p. 42). This was apparently the practice until 1847.

The Act Book recites various citations, and then records the Assembly at St. Paul's, the Latin Prayers, Sermon by Hugh James Rose, adjournment to the Chapter House, reading of writ . . . Sentence of Contumacy on Absentees, &c., Order to the Lower House to elect a Prolocutor, his election, and the appointment of his presentors (Feb. 25th). On February 27th the Archbishop attends and the Prolocutor is presented to the Archbishop. The customary protest of the Dean and Chapter of Westminster (to save their rights) is read in the Jerusalem Chamber, and replied to by the Primate. Latin speeches are made by one of the Presentors of the Prolocutor and by the Prolocutor to the Archbishop.

The Primate (by Commissioner) proposes an address to the King. The Lower House concur with a verbal amendment to save their rights, which the Archbishop accepts.

March 11th, the address is presented to the King and the King's reply is read.

Then follow various prorogations till the next Parliament (Sweet, pp. 42, 43).²

It has been mentioned that Latin Prayers were said at the opening of Convocation. These were never to be omitted.³ The

¹ Archbishop Wake seems to have held that Convocation might deliberate on ecclesiastical matters provided it was only with the object of petitioning for a licence to proceed further (see Trevor on the Two Convocations, pp. 170-1), but was a little vague and apparently quite ineffective.

² As to York Convocation see pp. 42-8, 343-6. At pp. 343-6 there is an account of a meeting of York Convocation on November 5th (or 6th), 1852. An account was given in the *Morning Chronicle*. William Dodd was present as a Proctor for Lindisfarne.

³ Halsbury, *Laws of England*, tit. 'Eccl. Law', p. 383, note.

following is an extract from them supplied to me by a member of Canterbury Convocation in 1930:

'UT QUI,¹ AD AMUSSIM SANCTAE REFORMATIONIS NOSTRAE, ERRORES, CORRUPTELAS, ET SUPERSTITIONES OLIM HIC GRASSANTES, TYRANNIDEMQUE PAPALEM, MERITO ET SERIO REPUDIAVIMUS, . . .'

¹ For a translation of these prayers as given in the *York Journal of Convocation* [edited by Rev. George Trevor], 1861, p. 77, see Appendix A, p. 27 below.

III

THE TEXT OF THE ACT OF SUBMISSION, LORD COKE'S GLOSS, AND EDWARD DODD'S EXPOSURE OF THE GLOSS

I GIVE here in parallel columns the relevant words of the Act of Submission and the Resolutions of the two chief Justices and other judges expounding the act:¹

The Act for the Submission of the Clergy to the King's Majesty.

After reciting the submission of the Clergy in the Convocations it enacts:

'ACCORDING TO THE SAID SUBMISSION AND PETITION OF THE SAID CLERGY,' THAT THEY SHALL NOT 'ENACT, PROMULGE, OR EXECUTE', ANY CANONS WITHOUT THE KING'S LICENCE TO MAKE, PROMULGE OR EXECUTE SUCH CANONS.²

The resolutions of the judges on the Act of Submission.

Extract from Dr. Burn's *Ecclesiastical Law*, tit. 'Convocation'.

After quoting the Act of Submission, Dr. Burn states:

'ACCORDINGLY T. 8 Ja.³ IT WAS RESOLVED UPON THE STATUTE, BY THE TWO CHIEF JUSTICES AND DIVERS OTHER JUSTICES, AT A COMMITTEE BEFORE THE LORDS IN PARLIAMENT:

1. THAT A CONVOCATION CANNOT ASSEMBLE AT THEIR CONVOCATION WITHOUT THE ASSENT OF THE KING.

2. THAT AFTER THEIR ASSEMBLY THEY CANNOT CONFER,⁴ TO CONSTITUTE ANY CANON WITHOUT LEAVE OF THE KING.'⁵

¹ Of course the Act of Submission, &c., applied to York as well as to Canterbury.

² This is the effect of the Act stripped of its verbiage. Neither the word 'confer' nor anything like it is used. The Act also forbids the Convocations to assemble without the King's Writ.

³ 8 James I (1611).

⁴ This is the all-important word. As to the motives of Lord Coke and the other judges for introducing it; and how it misled both lawyers and the public for centuries, see Mr. Henry Hoare's speech on March 22nd, 1861, reported in his *Hints on Lay Co-operation*, vol. vi, pp. 1406-8, and quoted at p. 11 below. He refers to his Cambridge teacher, i.e. Edward Dodd, at p. 1408. See p. 13 below.

⁵ In Coke's Reports, Part XII (vol. vii), p. 72, and in Phillimore's *Ecc. Law*, p. 1535, the comma after the word 'confer' is omitted.

The Act of Submission (25 Hen. VIII, c. 19).

It will be well to add here the full text of this portion of the Act of Submission. After reciting the Submission of the Clergy it runs as follows:

‘Be it therefore now enacted by authority of this present parliament, according to the said submission and petition of the said clergie, that they ne any of them from henceforth shall presume to attempt, allege, claim, or put in ure, any constitutions or ordinance, provincial or synodales, or any other canons; nor shall enact, promulge, or execute any such canons, constitutions, or ordinance provincial, by whatsoever name or names they may be called, in their Convocations in time coming (which always shall be assembled by authority of the King’s Writ), unless the same clergy may have the King’s most royal assent and license to make, promulge, and execute such canons, constitutions, or ordinances, provincial or synodal, upon pain of every one of the said clergy doing contrary to this act, and being thereof convict, to suffer imprisonment and make fine at the King’s will.’

Now Edward Dodd was of opinion that the state of subjection described above was inconsistent with the Divine Mission of the Church and could not be Law. And if, as he firmly believed, the English Church was the Church of God, he felt that it must have some liberty of action. On this hypothesis, or rather I should say in this faith, he set to work and expended much time, trouble, and infinite pains in research. And he was rewarded; for he discovered that, after all, the Act of Submission simply forbade the Clergy to enact, or attempt to enact, any canon without the Royal Licence; but did *not* forbid them to talk about the desirability of enacting a canon *with* a licence or of petitioning the Crown for a licence.

Thus the Act did not render it necessary for Convocation to have a licence to discuss the desirability of framing a canon or for the discussion of general business. Mr. Dodd explained this to Mr. Henry Hoare and was himself in communication with Bishop Samuel Wilberforce.

IV

HOW THE MUZZLE WAS REMOVED

(a) *From Canterbury Convocation.*

As we have seen, it was universally thought that Convocation required a special royal licence before it could take any matter into consideration except the address to the Crown.¹ This condition of affairs was deemed unsatisfactory both by Evangelicals and those connected with the Oxford Movement. Accordingly, a Society for the Revival of Convocation was formed in 1850. Henry Hoare was Chairman, and his 'untiring zeal, diligence, and vigour were especially conspicuous'.²

Many and vigorous are the testimonies in his praise, for he spared neither work, time, nor money in the cause.

'One of the most indefatigable workers in the cause was Henry Hoare,' says F. W. Cornish.³ 'By his energy and capacity the organization was set going which was afterwards carried through successfully by Bishop Wilberforce and his fellow workers, &c., &c.'

Again, in a preface to a sermon preached in his memory, Bishop Samuel Wilberforce says:⁴

'He saw, therefore, that the restoration of the Church's Synods to action was what must precede a multitude of other improvements; that in them the clergy must be educated and disciplined to consult and to act together; that from them might come, ever and anon, a voice which, in the decay of discipline and above the lax utterances of courts of law, might reaffirm the ancient Faith and be the protector of our Catholicity.

'From this restoration of the Convocations he looked on to gathering in their proper ranks the laity of the Church to consult for the common weal, and to stand by and strengthen in many ways the lawful assemblies of the clergy.

¹ Perry, *History of the Church*, 3rd Period, p. 296.

² *Ib.*, p. 297.

³ *History of English Church in the Nineteenth Century*, part ii, p. 26.

⁴ This extract is taken from the *Monthly Broadsheet of News of the National Assembly of the Church of England*, September 10th, 1923. The Bishop's Preface is dated August 1866. It is stated in the Broadsheet that the Hoare Memorial Hall in the Church House is Henry Hoare's Memorial.

‘Having set this end before himself, he pushed it with the steadfast simplicity which was the distinguishing attribute of his nature. He gave time, money, thought, care unspeakable, to working out his great end. He traversed the whole country from end to end, ever loved and honoured alike by the mathematicians of his University or the gathered middle classes of manufacturing Lancashire and Yorkshire.’¹

Hoare was not, of course, a Member of Convocation, and though he conducted the campaign throughout the kingdom, he could not fight the battle within Convocation. That was done by Bishop Samuel Wilberforce, with some help from the Bishop of Exeter. Also, Mr. Hoare largely attributes his success to Edward Dodd, as will be seen from Hoare’s own statements below.

The following extract, taken from a speech delivered at Birmingham on March 22nd, 1861,² some years after the victory had been won, clearly shows Hoare’s line of attack as to Lord Coke and the word ‘confer’; and, at the close, mention is made of his debt to his Cambridge teacher.

‘In the year 1611 the circumstance occurred which I had chiefly in mind at the outset. You have all heard, laymen as well as lawyers, of that great lawyer Sir Edward Coke, who lived in the reign of James the First. He was Attorney-General and died Lord Chief Justice of the Court of Common Pleas. Everybody knows that to the present day his sayings and doings are weighty. But he had the misfortune to serve two masters, the King and the Law. As is well known, he could, upon occasion, be a most obsequious person, and after those Canons of 1603 were imposed on the Church by James the First, a question arose upon them in the Houses of Parliament, and a case was reserved for the opinion of the judges, touching the powers of a Convocation. If any gentleman will look into Burn’s Ecclesiastical Law for the word ‘Convocation’, he will find

¹ His work with regard to Convocation and other kindred subjects entailed a large correspondence which he published in nine volumes, entitled, *Hints on Lay Co-operation. A collection of documents showing how the co-operation of Clergy and Laity may be conveniently obtained; the Synods of the Clergy remaining intact and the Royal Supremacy inviolate* (London: Rivington).

² The Hon. and Rev. G. M. Yorke, Rural Dean of Birmingham, in the Chair. See also letters of Mr. Hoare, *Hints*, part i, p. 246, October 28th, 1857; p. 190, June 19th, 1857.

certain words quoted from Coke's answer as to the legal powers of that body. Now the wording of that famous answer is such that ninety-nine men out of a hundred, and ninety-nine ladies too—for they are liable to error as well as we are—would probably understand it in one way. Rather let me say that they would so misunderstand it. Only within the last few years has its necessary meaning been discovered. It is extraordinary, but most true, that the wording of his answer is such as would mislead ninety-nine out of every hundred, if it did not mislead the hundredth too. Lawyers—Divines—Statesmen—have been misled by Coke. Never, perhaps, was more cunning, crafty, subtle, and clever language penned by mortal man. He had to do two things—to save his own credit as a lawyer, which he has done, and to please his Royal master, who wanted to make out that the Clergy had no right to freedom of debate. One instance will exemplify his craft. Let me first explain the word “constitute”. It comes from a Latin word, and from it is derived the word “Constitutions”, in the sense of Laws, or Canons. It is of equal force with a word in common use, the word “enact”. The law was, as I mentioned, that the Clergy should not enact Canons (or, if you will, constitute them) without the Sovereign's Licence. They were forbidden to enact them, but debating was not prohibited. They might consider the Draft, and lay it before the Sovereign for his approval. If he did not approve of it, they would have to alter it until he did. Coke does not say that the Clergy may not constitute Canons, because if he had merely said that, it would not have been what the King wanted. James wanted to bring it about that they should not confer together without his permission; on the matter of Canons or on anything else. The King was for giving them leave, as it were, to tie their shoes, and if he did not give them leave, he would fain bring matters to such a pass that they should be unable to tie them. Coke therefore put his answer in another shape. He starts by saying that they may not “confer”, and then brings in the real truth, which is simply that without due Licence they may not constitute Canons, by proceeding to say that they may not so confer to constitute them. Admirable craft! Now suppose that I told you that you must not confer to rob a man. You would reply, “Nonsense. Do you mean that we may not conspire with

others to walk into a man's house and rob him? If so, why not say simply that we must not do either? Of course we may neither rob, nor conspire to rob; but why say that we must not 'confer'? You must surely have a motive for using such a strange word." On the whole, then, we see how Coke's words must be construed. He must be taken to have laid it down that without Licence the Clergy must not confer, if the result of such conference is the unlicensed enactment of Canons. This is what he must have meant to stand by. He would not dare to say, and he did not say, that without Licence they must not confer about Canons, for that would have been explaining the law falsely.

'Our great men, then, have been misled by his words. Some argue from them that the Clergy must not confer at all upon Drafts for Canons; and many who have looked into this matter—including our greatest lawyers and divines—have thought that there was something in the Statute under consideration which makes such conference unlawful. Therefore every one who wants to form an opinion upon this matter, which is all-important, will have to read the Act of Parliament for himself . . .

'And now, Sir, let me conclude. A greater amount of gratitude than I can well express is due to you, for having so kindly, and at the eleventh hour, taken the chair for us to-night. Equally grateful do I feel to the ladies and gentlemen present, who have given me their patient attention, especially to the members of the legal profession. Let them take up my legal statement—find fault with it, if they can—and if not, follow it out with me to its legitimate conclusion; giving all due praise and honor to him¹ who, having worked out his own lesson at Cambridge, has been my teacher, and has enabled me to teach you.'

Mr. Hoare makes a similar complaint of Lord Coke and his fellow judges in a letter of May 15th, 1858, to the Earl of Derby, which will be found in Sweet, p. 491.

If we turn now to Canterbury to see what actually happened there, we shall find that from time to time attempts were made to revive Convocation.

Thus, 'At the formal opening of the Canterbury Convocation on February 5th, 1851, endeavours were made by some of the members to enter upon active business after the usual

¹ i.e. Edward Dodd. See letters of Mr. Hoare, pp. 22-24 below.

preliminaries were completed, but Archbishop Sumner at once repressed those endeavours by ordering his registrar Mr. Dyke to read a Schedule of prorogation.'¹

On February 4th, 1852, by the same simple method 'Archbishop Sumner brought all business to an abrupt close by ordering his Schedule of prorogation to be read'.

At the same meeting, Bishop Samuel Wilberforce presented a petition, the prayer of which was 'that Convocation should address the Crown by petition'; and in presenting it announced his intention of moving that 'this House do consider the prayer of the petitions', upon which the Queen's Advocate (Sir J. Dodson) interposed and said that he felt it his duty, as legal adviser to the Archbishop, to declare that such a motion was without precedent. For the past 135 years the Crown had called Convocation together purely as a matter of form, but had not permitted it to act. 'He then quoted in support of his argument the Statute (25 Hen. VIII, c. 19) which (he said) prohibited Convocation doing any business whatever without the express sanction of the Crown.' The Bishop of Exeter differed from this view; 'Business, he explained, was making Canons not petitioning the Crown'.² Bishop Wilberforce then explained his motion. In the end, Convocation was prorogued till August 19th (p. 138). Before that date the Parliament was dissolved and (necessarily) Convocation with it.

'Convocation met formally on November 5th. The Lower House elected its Prolocutor and adjourned to November 12th,³ [1852]. On that day it met for the dispatch of business for the first time for 135 years.'⁴ So the muzzle was removed at Canterbury.

A full account of the proceedings in the Upper House is given in Warren's *Synodalia*. Bishop Wilberforce's biographer—his son Reginald—adds:

'It is right to mention in this place that the Bishop derived

¹ Joyce, *Acts of the Church*, 1531-1885.

² *Life of Bishop Wilberforce*, vol. ii, p. 137.

³ For an account of these meetings of November 5th and 12th, see Sweet, pp. 333-7; Warren's *Synodalia*, pp. 118-22; Trevor, p. 156. In a letter of February 6th, 1852 Wilberforce states that Dodson was obliged to allow that the proposal for address to the Queen for a licence was not illegal (*Life*, p. 138).

⁴ *Life of Bishop Wilberforce*, vol. ii, p. 153.

great assistance from his lay co-adjutor Mr. Henry Hoare, who worked heartily with him for the restoration of Convocation' (p. 154).

Thus Henry Hoare, helped by the learning of Edward Dodd, the eloquence of Samuel Wilberforce, and the forcefulness of both, achieved the revival of Convocation.

I have some doubt whether at the same period it was admitted in official circles that it was lawful to discuss making a canon without a licence to discuss; but on February 25th, 1860, the Archbishop of Canterbury sent to Her Majesty's Government a Petition from Convocation for a licence to Convocation to make a new or amended canon in the place of the 29th Canon of 1603; and it does not appear either from the published correspondence between the Archbishop and the Government or from the Minutes of the Lower House of Convocation, February 27th, 1861, that there was any licence to discuss.¹

At the present time, Convocation and its Committees discuss without any licence whether it shall petition for a licence to enact a canon, and they also discuss the details of any canon which it wishes to make.²

¹ It appears, however, from a statement of Dean Elliott in *Hints*, pp. 1860 and 1861, that there was a licence. He says 'that the Crown, in giving Licence to Convocation to consider the 29th of the Canons of 1603, was ill-advised, and that the course so followed by the Crown "conduced to the revival of the huge mistake of the possible existence of an independent ecclesiastical co-ordinate with a national law".'

² In connexion with this subject I have received the following letter dated June 4th, 1931, from a Member of Convocation:—

'I have now been able to make inquiries as to the question you raised.

'The procedure still adopted is as follows: if there is any serious suggestion to make a new Canon an application is made for a Royal Letter of Business. Then, when the matter has been fully discussed, *before* the proposed Canon is enacted Royal consent is obtained. I understand that this procedure does not prevent a certain amount of consideration of the general question of the desirability of a new Canon before application is made for the Letter of Business.

'The only exception to this procedure that I have heard of is that connected with the change of the constitution of Convocation in 1921. In this case the application for a Letter of Business, I believe, was not made because of a Measure which had just received Royal Assent giving Convocation power to reform its constitution.'

I have, no doubt, that the plan of applying for Letters of Business to discuss, after a certain amount of discussion has already taken place, is very convenient as avoiding the risk of Convocation proposing a canon which the Crown refuses to permit it to enact; but this method has the danger of

The statement that Henry Hoare (who was neither barrister nor solicitor) and his friends had to teach counsel as to the proper construction of an Act of Parliament¹ will seem so strange to my readers—and especially to those of the legal profession—that I will set out in full the opinion of Dr. Robert Phillimore on this point, dated November 2nd, 1852.

‘I am of opinion that when Convocation has been duly summoned and convened, it may lawfully proceed to deliberate upon, and transact, any business, for the deliberation upon, and transaction of which, the assent and licence of the Crown is not rendered previously necessary by the Statute 25 Hen. VIII, c. 19; *that Royal assent and licence is a necessary preliminary to the discussion of any new canon, constitution, or ordinance, provincial or synodal*. I do not find any other limitation upon the powers of Convocation imposed by that Statute, and I am not aware of any further restraint which is laid upon them by any other statute.’²

Now Dr. (afterwards Sir Robert) Phillimore was a most learned ecclesiastical lawyer, and excellent High Churchman, and most fully in sympathy with the aims of his clients. He was afterwards Dean of the Arches Court.

In the same pamphlet, at page 17, we find the opinion of the Attorney-General, Sir Frederick Thesiger (afterwards Lord Chelmsford and Lord Chancellor), that the Statute 25 Hen. VIII restrains Convocation from ‘*any discussions and deliberations upon Canons &c. proposed to be enacted*’.

In the same pamphlet, at page 18, will be found the opinion of Sir William Page Wood (afterwards Lord Hatherley and Lord Chancellor) that the Statute 25 Hen. VIII, c. 19, restrains the Convocation from enacting any new canon³ ‘*and from debating on any proposition for such purpose*’.

Convocation losing its right to discuss without Letters of Business and so bringing Convocation under the yoke of Lord Coke. The full right to discuss without Letters of Business should be fully and loudly stated.

¹ See p. 5 above and pp. 23–25, 32 below.

² This is copied from a pamphlet containing the opinions of Dr. Robert Phillimore and others, upon a case submitted by the Society for the Revival of Convocation (Rivington), p. 9.

³ Nobody denies that it forbids *enacting* any new canon without Royal Licence. Mr. Hoare was not opposed either to the Royal Supremacy, or to the ‘Statute of Submission’, which he calls ‘that most glorious statute’; only desired that attention should be paid to its true meaning (*Hints*, part viii,

In Edward Dodd's copy of this pamphlet will be found his note, viz. the word *wrong* annexed to each of these statements which I have italicized. Mr. Hoare and his friends were not at all deficient in courage, and they were in the right.

(b) *From York Convocation.*

The Northern Convocation, like that of Canterbury, was subject to the Act of Submission, but its muzzle was made more effective than that placed upon the larger body. It was hardly allowed to breathe. The removal of the muzzle was much more difficult and gave rise to some exciting and picturesque incidents. The battle against the Archbishop and his advisers had to be fought by the Clergy alone, as they do not appear to have had any help from their Bishops. There was no Samuel Wilberforce among them. Outside, however, they had the help of Mr. Hoare and of his friends and of his Society.¹

It must have been difficult work for the Clergy to tackle their Most Reverend Father-in-God and his advisers. They had to put up with being snubbed and with very arbitrary treatment.

On one occasion they were promptly suppressed because they wanted to elect a prolocutor before concurring in a loyal address to the Crown.² 'The last utterance of the northern Convocation', says Mr. Sweet,³ 'had been an address of thanks to Queen Anne for her bounty to the clergy!'

At another time,⁴ when summoned to Convocation, the Clergy who attended found the doors of the Chapter House closed and kept closed against them. The rejected Clergy at the Chapter House door would have been a good subject for an artist, and even now might be used for a York pageant.

It is needless for me to give a detailed account of the methods by which Dr. Musgrave, the Archbishop of York, and his Commissioners refused, with the best possible intentions, to remove the tightened muzzle of the York Convocation, or of the efforts for freedom made by some of the Clergy,⁵ but I have described

p. 1822), letter to the Bishop of Down and Connor and Dromore, October 23rd, 1862.

¹ See Sweet, p. 392.

² *Id.*, p. 319.

³ *Id.*, 319.

⁴ See pp. 18-20, below.

⁵ I should especially mention Canon Trevor and Archdeacon Thorp.

in the Appendix ¹ a single episode in which the vicar of a country parish² positively refused to be silent, and insisted upon speaking when the Archbishop's Commissioner was trying to prevent him from doing so. The scene was deemed sufficiently humorous to be recorded in the pages of *Punch*.

At the York Convocation on November 6th 1837,³ several of the Clergy, as their names were called,⁴ asserted their right to address the Queen on her accession to the throne in common with their brethren in the South, and to proceed to business; also to petition the Archbishop to intercede with Her Majesty that she would from time to time reassemble and convene the Bishops, Archdeacons, and Proctors of the Province that they might deliberate and advise, &c. 'The York Convocation was only prevented from formally expressing itself in favour of Synodal revival by the inexorable immobility of the Archbishop's Commissioner',⁵ 'for he gravely enacting the accustomed farce, formally closed the Convocation which he had formally prevented from doing any of the business proper to it'.⁶

On November 19th, 1847, by leave of the President (Commissioner?), a petition from the Archdeacon of York was read complaining of the election of proctors in his archdeaconry.

'He then moved that the petition should be received, which after a debate was put to the vote by the President, and declared to be carried . . . The President then announced that an address to the Crown had been agreed to by the Bishops, the draft of which he had placed in the hands of the Archdeacon of the East Riding, who rose to move its adoption. Upon this a claim was made . . . for the clergy to elect their prolocutor . . . but the President refusing to allow of the proceeding, the assembly was

¹ See pp. 27-32, below.

² William Dodd, brother of Edward Dodd, and Vicar of Chillingham. This incident occurred on June 1st, 1859. See Appendix p. 28, below, and Sweet, p. 398. William Dodd was previously Vicar of St. Andrew's, Newcastle-upon-Tyne. A violent epidemic of cholera visited the city while he was there: and when the scare was so great that it was difficult to find persons to put the dead into their coffins, it was he who in some cases performed this dangerous office.

³ This account is summarized from pp. 42-5 of the Memoir of Henry Hoare by J. Bradley Sweet.

⁴ Archdeacons Headlam and Thorp, the Revs. G. Townsend, J. C. Franks, Dr. Besley, and H. J. Duncombe, p. 44.

⁵ Id. p. 43.

⁶ Id., p. 45.

thrown into some confusion, and finally prorogued before the address could be moved, or even read.'¹

In February 1852 the Clergy were treated even worse. After they had attended service at the Cathedral on the day to which Convocation had been prorogued, although they had given notice to the Archbishop that they had some petitions to present, they found the doors of the Chapter House closed; 'and one of the Residentiary Canons who is the Archbishop's Commissary declined to open the Chapter House in the absence of any directions from his Grace'. For some years it had been the practice at York for the Archbishop and Clergy not even to attend on the days to which Convocation had been prorogued by Royal Writ; though in Canterbury the Archbishop or Commissary always attended for the formal prorogement.²

On November 6th, 1852, several petitions presented by the Clergy were received by the Archbishop's Commissioner and ordered to be deposited in the Registry.³ Most of the Clergy took occasion to assert their concurrence with them. Archdeacon Thorp read over a resolution in the form of a prayer that the petitions (and certain protests as to elections) be taken into consideration. The Commissioner refused the application. Canon Trevor, after previous fruitless efforts, succeeded in inducing the presiding Commissioner to receive a petition from himself.

At the nominal Meeting of York Convocation on February 1st, 1856, the Archbishop's Commissioners were instructed to refuse any reply to inquiries and to allow no discussion in the absence of a Royal Writ to proceed to business.⁴

These proceedings seem so astounding that it is worth while to add the testimony of Prebendary Joyce, especially as he throws a little additional light on the peremptory way in which the Clergy were treated by the Archbishop of York and his 'Commissioners'.

On February 5th, 1851, and February 4th, 1852, 'in the Province of York, the Metropolitan Dr. Musgrave did not even attend, nor were the members who assembled allowed even to enter the Chapter House. Some of them, however, sent a representation to their Metropolitan on the subject. His Grace

¹ Trevor, p. 203.

³ Id., pp. 343-6.

² Sweet, pp. 46, 317.

⁴ Id., p. 394 note.

curtly replied by letter that in the absence of a "Licence" from the Crown no active business would be entered on'.¹

According to Joyce, York Convocation was similarly prorogued so as to allow no business to be done from November 5th, 1852, to February 1st, 1854, inclusive. In 1852 the Archbishop absented himself, having constituted as his Commissioner the Rev. Canon Hawkins, 'who forbad discussion'—according to Mr. Foyer—in a manner not too courteous. On May 18th, 1853, the Archbishop appointed the Rev. Canon Dixon as his Commissioner to preside.

When a new Convocation was convened with the new Parliament it was again forbidden by Dr. Musgrave to proceed to business. 'It was prorogued from time to time, on one occasion by the Dean of York, Dr. Cockburn, acting as Commissioner for the Metropolitan—the Dean not adopting the most courteous manner imaginable.'²

We are now approaching the end of the story.

On June 1st, 1859, the Lower House elected Archdeacon Thorp their prolocutor, but the presiding Commissioner did not 'recognize' the election. For an account of this lively meeting, see Appendix B.³ The dog was tearing at the muzzle. According to some, this election of a prolocutor was deemed the liberation of the Convocation of York.

On August 16th, 1860, the Archbishop came himself and listened, but was unconvinced.⁴ However, an opinion⁵ of Mr. A. J. Stephens was sent to him, and the results were apparent in the proceedings on January 25th, 1860.

The Convocation was prorogued from time to time till January 25th, 1860, when Archdeacon Thorp acted as prolocutor and appointed the Hon. and Rev. F. R. Gray and the Rev. James Thwaytes his assessors, who by his direction proceeded to the Archbishop's Commissary who had withdrawn to the vestry. But the Commissary said: 'I have prorogued the House already'; and, 'there is no Prolocutor.'⁶ Mr. Gray replied

¹ The above quotation is from *Acts of the Church*, 1531-1885, by Prebendary James Weyland Joyce, 1886.

² *Id.*, pp. 271-2.

³ See p. 27 below, and Sweet, p. 398.

⁴ Sweet, 399.

⁵ *Id.*, 400.

⁶ *York Journal of Convocation*, 1861, pp. 12, 14. These proceedings are given from a paper published by the Society for the Revival of Convocation. A note is given in Sweet, p. 401.

that 'till the Prolocutor receives the Writ of Prorogation the House is still in Session'. Notwithstanding the Commissary's attitude, the House continued to sit in the Chapter House¹ and passed various resolutions, including an 'Address to the Crown by the Proctors for the Clergy of the Province of York in Convocation assembled'. This received a 'gracious reply'.

On May 4th, 1860, Archbishop Musgrave died and was succeeded by Dr. Longley, Bishop of Durham; on February 6th, 1861, Archdeacon Thorp was elected prolocutor by the Lower House, and was presented to, approved, and confirmed by the new Archbishop as Prolocutor and Referendary of the Lower House of Convocation of York. And on March 20th, 1861, the Convocation began the consideration of various subjects of importance. So at last, even in York, the ban was removed and Convocation was revived.²

¹ *Journal*, pp. 13, 19.

² Sweet, pp. 403-4; *Journal*, p. 23.

EDWARD DODD

THE large share of Edward Dodd in the work of bringing Convocation to life after its long slumber is proved by Hoare's own testimony. The following is an extract from a letter of Hoare, dated March 7th, 1859, to the Editor of the *Scottish Ecclesiastical Journal* on 'the present position of the Synodal question in England'. After some complimentary references to the Sovereign, the Archbishop of Canterbury and Bishops and Clergy and the Lord Chancellor, he adds:

'Adhering to the tenor of a Letter written by Mr. G. B. Hughes in the year 1851, when consulted on the law which regulates the action of Provincial Synods, with reference to a course which we were then resolved to press upon the late Bishop of London, in regard to the presentation of a Petition to Convocation, we have had the satisfaction of subsequently finding the views in that Letter confirmed through the profound researches of the Vicar of St. Giles's,¹ Cambridge. That gentleman has devoted years of toil to the investigation of truths which few lawyers of our days have found it worth their while to touch, except in the most unsafe, because superficial manner; and the result is, that the law for which we contend is clear. It is simply this, that the Clergy when lawfully assembled in pursuance of the Queen's writ, have an unrestricted liberty to consult upon things lawful (the materials for lawful Canons included), but that, in order to enact things lawful, they require an anterior Licence *del Roy*, permitting such enactment to take place. This is the Law, and this is safe.'

In October 1862 at a Conference of the Clergy and Laity of the Diocese of Down and Connor, and Dromore, held in Belfast under the Presidency of the Bishop, he read a letter written by himself in the previous May to James Murray Dale, Esq., which contains the following:

'From the Rev. E. Dodd I have learned all that I know about

¹ Edward Dodd, see p. 1 above.

the law touching Provincial Convocations; and it is due to him to say, that he has never led me into any antiquarian and useless researches. On the contrary, his views are exceedingly simple and eminently practical. Of course, no sensible man, and above all no lawyer, will undervalue caution or accuracy; and these are two matters in which I have never known his equal.' ¹

I conclude this portion of my subject with letters from Mr. Hoare to William Dodd and Edward Dodd, published in part ii of his *Hints* (pp. 354-7), and in part viii of the same *Hints* (pp. 1965-6); and an extract from *A Memoir of the late Henry Hoare*, by the Rev. James Bradby Sweet.

In March 1858 Hoare wrote to William Dodd, Edward's brother, in the following terms: ²

'To the Reverend
William Dodd,
Rector of Chillingham,
Alnwick.
One of the Proctors for the Archdeaconry of Lindisfarne.

York, March 23, 1858.

Rev. and Dear Sir,

Permit me to thank you for the kindness which I received yesterday at your hands, on the occasion of my visit to this ancient city, in company with your brother, the Rev. Edward Dodd, Vicar of St. Giles's, Cambridge, with a view to the assembling of Convocation to-morrow.

He is the party to whom I alluded in a certain Letter addressed on the 19th of June, 1857, to the Rt. Hon. Sir George Grey, Bart., then Secretary of State for the Home Department; and I rejoice to believe that his views as to the original construction of the Act of Submission will shortly be made public.

It has been observed by an Ecclesiastical lawyer with whom I have the pleasure to be acquainted—one of the most eminent of the present day—that for some time past a comparatively small amount of attention has been given by members of his own profession to the study of the Law Ecclesiastical.

¹ The above is an extract from the Report, edited by the Rev. Alfred Lee, 1863, pp. 71, 72. Mr. Hoare's letter and also a speech which he made at the Conference contain some interesting remarks on Coke and the right to 'confer': see pp. 71-5.

² *Hints*, pp. 354-5.

Such being the case, all contributions which tend to unravel a subject so full of acknowledged difficulties, appear to me specially valuable; and although my position in the Convocation Society has brought me into contact with some of the wisest, the most learned, and the most cautious of men, yet among various contributors, it would be ungrateful as well as unjust, on my part, not to assign a prominent position to your brother, who has devoted years of patient and hitherto unrequited labour to a profound examination of the important but intricate Statute just mentioned.'

In 1863 Mr. Hoare wrote to Edward Dodd as follows: ¹

'To the Reverend
Edward Dodd,
Cambridge.

Staplehurst, Kent.
Friday, January 9, 1863.

Rev. and Dear Sir,

As Chairman of the Convocation Society, I may have had the means of rendering to this Church and Nation a somewhat larger amount of service than I myself was aware of, as time went on. Now at page 1408 of my Book of Correspondence you will see that, whereas I might appear to be drawing or wishing to draw on myself praise and honour in respect of the matters on which I had been publicly dwelling, I speak of these as due to you, my great, nay (to repeat with emphasis what I have often said) my only but all-sufficient teacher. Not a single book have I read on the subject of what you call the Synodal and sacred cause of the Church; but, thanks to you, I know more about its legal and practical bearings than most men. And the consequence is, that I can walk among Lawyers with head erect—see through the cunning and craft of courtiers of a bygone age—disregard kingly precedents of the same date, which, however loudly vaunted, are nevertheless of an ill savour—and in fact look down, as from high vantage-ground, on all the gainsayers of Synodal action . . . You deserve no small amount of thanks for your fearless advocacy of what some are slow to admit, viz. the collateral duties and rights of the faithful Laity; Churchmen, as your phrase runs, not in Holy Orders. Those duties and

¹ *Hints, &c.*, part viii, pp. 1905-6.

rights you ever assert in the noblest manner, deny them who may.¹

Believe me,

With the sincerest respect and esteem,
Yours ever faithfully,
Henry Hoare'

In addition, James Bradby Sweet, who wrote a Memoir of Henry Hoare (1869), thus refers to Edward Dodd:²

'At a later date Mr. Hoare always acknowledged himself and the Church to be more largely indebted to the late Rev. E. Dodd, Vicar of St. Giles', Cambridge, than to any other person, for the vindication of the Church's liberties from traditional misinterpretation of the Act of Submission (25 Hen. VIII, c. 19) "the only Act which at that time, or since, has attempted to lessen the power or authority of the Convocations or of the Archbishops or clergy assembled in them".'³

Edward Dodd and Bishop Samuel Wilberforce.

Mr. Dodd also had direct communication with Bishop Wilberforce; and when he explained his ideas as to Convocation, the Bishop first said, 'I see your meaning'; and after a further talk remarked, 'Your views go on All-fours', i.e. are consistent. Finally Wilberforce declared that he went heart and soul with him.

It was this great Churchman who really fought the battle inside Convocation, although he was aided by the Bishop of Exeter.⁴

Thus it seems clear that by his researches Edward Dodd made the important discovery that the helpless position of Convoca-

¹ References to the great help given by 'our friend at Cambridge' [i.e. Edward Dodd] are given in *Hints*, part vi, pp. 1964-6; and it was suggested that something by way of honorarium should be given him. As a matter of fact Mr. Hoare offered him 400 guineas, which he declined.

² P. 238.

³ Case, Metropolitan Church Union Report, No. IV, p. 18, May 1850—*Hints*, &c., p. 1645. As to the difficulties which existed in the minds of the lawyers and of the Church Authorities, Mr. Sweet refers to Joyce's *Sacred Synods*, chap. xi, pp. 367-8, and Mr. Hoare's *Hints*, &c., pp. 246, 1412, 1647, 1827. *Hints*, &c., means *Hints on Lay Co-operation*.

⁴ On one occasion the Bishop of Exeter said he would retire from his Bishopric if the Church was impotent. Sweet, pp. 341, 342, note.

tion had no foundation in law ; but rested largely on an ambiguous legal statement and an official misinterpretation of a statute. Once this was made plain, a great obstacle preventing the Church from entering upon a life of new activity was removed.

I once asked my uncle what he would have done if he had found out that the law had really imposed this bondage on the Church, which he felt was so wrong ; and he replied that he would not have gone over to Rome, but that he should probably have retired to lay-Communion.

I have written this little Memoir of my uncle, not only from affection for his memory, but because his work teaches those who wish to overthrow any abuse supposed to be authorized by Statute, not to trust the views of the officials or departments concerned in the administration of it ; and not to be daunted by their long continued practice, or even by the general opinion of lawyers or the dicta of judges ; but to go to the fountain head, and most carefully to consider the exact terms of the Statute which is supposed to authorize the mischief which it is desired to remove.¹

¹ See also Appendix D and Appendix E, pp. 32, 34 below.

APPENDIX

A. FORM OF PRAYERS TO BE USED IN BOTH HOUSES OF CONVOCATION OF YORK AT THE OPENING OF EACH DAY'S SESSION [see pp. 6, 7, above]

Litany to be said at the opening of each day's service in the Upper House by the last consecrated Bishop, and in the Lower by the Prolocutor after he has been elected, approved, and confirmed.

'O God, the Father of Heaven, &c.' (as in the Book of Common Prayer) with the Special Suffrage immediately after that for the Bishops, Priests, and Deacons.

'That it may please thee to rule this Convocation by the inspiration of thy Holy Spirit, so that we may be guided into all truth.

'O Lord God, Father of Light, and fountain of all wisdom, we thine unworthy servants do humbly bow before thy footstool and pray that being gathered together in thy Name, and by authority of our gracious Queen Victoria, we may be assisted by thy grace, and enabled to devise, discuss, and determine all such plans as may promote thy glory, and tend to the advancement of thy Church.

'Grant, therefore, that thy Spirit may now rule this our Convocation, as it did of old the Council of the Apostles, and may guide us into all truth, so that we, who according to the order of our Holy Reformation have deliberately and with good reason renounced the errors, corruptions, and superstitions, as well as the Papal Tyranny, which once here prevailed, may all constantly hold fast the Apostolical and truly Catholic Faith, and may duly serve thee without fear, and with a pure worship, through Jesus Christ, our Lord and Saviour. Amen.'

[Then follow several Collects, the Prayer of S. Chrysostom, and the Grace. For Latin version, see Trevor, p. 196.]

B. SCENE IN THE CONVOCATION OF YORK, 1 JUNE, 1859, AND WILLIAM DODD

'On Wednesday, June 1st, 1859, the Clergy in the Lower House of Convocation in the Province of York elected a Prolocutor, the Ven. Charles Thorp, D.D., Archdeacon of Durham.'¹ He accepted office and was nominated to the Commissioners of the Archbishop who, in the absence of His Grace, acted in his stead.² The Presiding

¹ *Hints*, part iv, p. 707, note.

² *Id.*, part vi, Memorandum, p. 1303.

Commissioner, however, prorogued the Convocation without recognizing the election.¹

Then, according to the statement of the Society for the Revival of Convocation:

‘A motion was made and seconded for a loyal Address to the Crown which the Commissioner refused to receive, and suggested that it should be sent through the Secretary of State.

‘Petitions were presented by several Proctors—among them the Rev. W. Dodd, from Clergy of the Archdeaconry of Lindisfarne, and the Rev. Beilby Porteous, from the Clergy of the Archdeaconry of Carlisle, who proceeded to read them.’

The Schedule of Prorogation was read by the Commissioner and the proceedings terminated.²

The above is a very brief and incomplete account of the proceedings, as only sufficient is stated for obtaining Counsel’s opinion. And there appears to have been no record whatever of them in the Archbishop’s Registry; so for a correct account we must resort to the public press. The following is an extract from *The Guardian*,³ the leading Church newspaper of the day:

‘Convocation of York’

‘On Wednesday the 1st of June the Convocation of York was held, under the Queen’s Writ, and by the Archbishop’s Mandate in the Chapter House of the Cathedral. The attendance of the representatives of the Clergy was unusually numerous. The proceedings were opened with the usual formalities by the Hon. and Very Rev. Augustus Duncombe, Dean of York, and the Ven. Archdeacon Creyke, acting as the Archbishop’s Commissioners.’ (Archdeacon Thorp was proposed and seconded for the Office of Prolocutor.) ‘This was received by the Clergy without any dissentient voice and no other name was proposed. Whereupon the Archdeacon thanked the Clergy for the confidence they had reposed in him and expressed his willingness to discharge the duties of the Office unless prevented by higher authority. The election of a Prolocutor, however, was not recognized by the presiding Commissioner.’

‘After this, the Rev. W. Dodd, Proctor for the Archdeaconry of Lindisfarne, proposed to present a petition from certain clergy of

¹ *York Journal of Convocation* (edited by Canon Trevor, 1861), p. 8.

² *Id.*, p. 8 (note). Case and opinion of Counsel for the Society for the Revival of Convocation. The opinion is dated August 14th, 1859, some time after the meeting here described.

³ Supplement to *The Guardian*, June 8th, 1859.

the said Archdeaconry, to the effect that the proceedings of the Convocation of York should be assimilated to those of the Convocation of Canterbury. The Commissioner refused to allow the petition to be read. Upon which Mr. Dodd inquired if he were certified that he had power to prevent the reading, adding that he was advised by high legal authority that he possessed the right to read the petition. The Commissioner replied that he had a public duty to perform, and persisted in his refusal. Mr. Dodd replied that he also had a duty to perform to his constituents, and without meaning any personal disrespect to the Commissioner, he, on his own responsibility, would read the petition, and straightway proceeded to do so. The Dean at the same time began to read the Schedule of prorogation. Notwithstanding, Mr. Dodd went on reading the petition and finished doing so before the Schedule of prorogation was concluded. The business being over, Mr. Bird protested against the proceedings as a grievous injury and gross insult to the Clergy of the province of York, as those represented, on the part of the Archbishop and his Commissioners, in which protest many of the assembled Clergy loudly expressed their concurrence.'

Mr. Punch saw the humour of the situation and gave his readers the following graphic account: ¹

'Acts of the Council of York'

'A solemn and imposing scene took place the other day in the ancient and venerable Cathedral City of York. The Clergy of the Metropolitan See assembled themselves thereat in high Council of Convocation. The Archbishop presided in the person of his representative, the Dean. The highest—the only important—interests of man were contemplated as the end of their momentous deliberations. This fact being borne in mind, the commencement of the proceedings of the reverend meeting, described in the following extract from the report of them must appear invested with a peculiar significance.'

'After her Majesty's Writ had been read, several protests were handed in by the Proctors, and rejected as frivolous.'

Punch says: 'What a very proper ground of rejection! *Procul, O procul este, profani!* No nonsense in the Congregation of Divines, met to discuss the things of eternity. Away with frivolity! There is a time to laugh, but not now—a place in which it is pleasant to play the fool, but that is not this! Be serious here and at present.'

¹ Vol. xxxvi, p. 254, June 18th is the date of *Punch*. The Convocation was held on June 1st. See *The Guardian*, June 8th, 1859, pp. 506–7, quoted above.

And then, the report proceeds to say:

'The Rev. J. Thwaytes, one of the proctors for the Archdeaconry of Carlisle, prayed that they might be allowed to elect a prolocutor, for which he said he had the sanction of the highest legal authority. . .'

'The following debate, the gravity of whose bearing on the concerns of immortality cannot be estimated, then ensued:

'Mr. Hudson, Deputy Registrar, in reply to the Dean, said that no licence had been received from the Crown to proceed to business. The Rev. R. Greenhall, Proctor for the Archdeacon of Chester, wished to present a Memorial to the Archbishop, numerous signed by the clergy. The Dean said he would receive it and give it due consideration. One of the Proctors said he had come from a remote part of the province. The Dean said he could not allow of any discussion.'

Punch observes: 'The remark of the Very Reverend the Dean was a just rebuke to his unthinking brother, the proctor. Suppose he had come from a remote part of the province—what then? Was that so great a labour to endure in the exercise of apostleship? To business—to the all-important question before the clerical House! And so—

'The Rev. J. Thwaytes moved that Archdeacon Thorp, of Durham, be the prolocutor.

'The Hon. and Rev. F. R. Grey seconded the motion.

'The Rev. W. Hornby: "We have moved and carried a prolocutor."

'The Dean: "No."

'Loud cries of "Yes".

'The Venerable Archdeacon Thorp thanked the proctors for his election as prolocutor. . . .

'The Rev. W. Dodd, from the Archdeaconry of Lindisfarne, wished to present a petition, signed by the Archdeacon and fourteen of the clergy, in favour of proceeding to business. That is, of course, to business of a still more serious and solemn nature than what had been previously transacted. Accordingly:

'The Dean said Mr. Dodd must not discuss it.

'The Rev. W. Dodd proposed to read it.

'The Dean said he could not allow it to be read.

'The Rev. W. Dodd: "Reading is not discussing."

'The Dean: "There is no precedent."

'The Rev. W. Dodd: "I am advised by the highest legal authority."

'The Dean said on his own responsibility he would not allow it to be read.

'The Rev. W. Dodd: "I mean no personal disrespect to the Dean, but on my own responsibility I will read it."

'The Dean and Mr. Dodd then commenced reading simultaneously, the former the writ of prorogation, and the latter, the Petition he held in his hand.

'This separate reading of two different documents, with which mystical act the proceedings terminated, must have had a fine ecclesiastical effect . . . Coming after the liturgical altercation . . . between the Dean of York and the Rev. Mr. Dodd, the duet, especially if it was intoned, must have been awful.'

It should be understood that William Dodd had seen that the petition was so worded that he could finish before the Dean had finished reading the prorogation, as otherwise he would have been out of order.

A little more information as to the conclusion of this scene is given in a letter from the Rev. Christopher Bird, a Proctor for Northumberland, to the Proctors for the Parochial Clergy of the Province of York, dated December 27th, 1860. The following is an extract :

'They (the Commissioners) refused to the representatives of the Clergy all liberty of speech, or to offer anything but written petitions presented in silence. In short, they proceeded in a way to prevent not only all synodical action at the time, but practically to abolish Convocation altogether; and concluded a very arbitrary proceeding by accelerating the retirement of the members from their presence, by the intervention of the Verger.'¹

Doubts were raised as to whether the Archdeacon was really prolocutor, and he himself shared these doubts; however, he was comforted by Edward Dodd, as appears by the following extract² from a letter of October 25th, 1859, of Archdeacon Thorp to Mr. Henry Hoare:

'Mr. Dodd tells me I am really Prolocutor and the election a valid act. If so, may I be so far useful as to venture to communicate with the Members of Convocation on any special matter.'³

C. NOTE CONFIRMING MR. HOARE'S STATEMENT.⁴

According to Lord Birkenhead,⁵ Coke often withstood James. He carried out his duty with great tenacity and dexterity, but on

¹ *Hints*, part vi, pp. 1306-7. See also part iv, p. 820.

² *Id.*, part iv, p. 820. Mr. Hoare refers to the election of Archdeacon Thorp; see also *id.*, p. 707 note.

³ This refers to Edward Dodd, not to William. Edward adds a note here: 'I corresponded with Arch: Thorp on the subject arguing that he was indeed a Prolocutor but possibly Totius Convocationis E. D.' See also *Hints*, p. 707.

⁴ See pp. 11-13 above.

⁵ *Fourteen English Judges*.

occasions at the expense of his dignity. More than once he grovelled on his knees. Lord Birkenhead speaks of his combining servile obsequiousness to James with adherence to his own point of view.

How the Judge's opinion was utilized to abridge the power of Convocation in 1603 and 1640 and 1700 may be seen in Trevor.¹ In the last year the Bishops (under legal advice) answered the Lower House that without a licence from the King they had no authority to censure Toland's Book 'but on the contrary, we are advised that by so doing both Houses of Convocation may incur the penalties of the Statute of 25 Hen. viii'.²

D. MISINTERPRETATION OF 43 ELIZ. c. 2

I can give another example, and this from my own experience, of the great benefit of resorting to the exact words of the Statute when abuses exist. Whereas the Poor Law Act of Elizabeth (43 Eliz. c. 2) discloses that some kind of relief must be given by the local Administrators (Parish Officers) to the 'Poor' who need relief, the Local Government Board said in 1871:

'The guardians need scarcely be reminded of the broad and general principle of the English Poor Law, viz., that no person has a claim to relief from the rates except in case of actual destitution.'³

Miss Lonsdale, explains that the meaning of the word 'destitute' in common talk is 'absolutely without possessions of any kind', and accepts that meaning for Poor Law purposes. She says indeed that the term *Poor Law* is very misleading, and that it ought to be called the 'Law of the Destitute'; and she then proceeds to deal with 'the Principles which lie at the root of our English Poor Laws, or Laws of Destitution'. This is in a shilling book which has run to a third edition, and has taught and represents the views of a large number of Guardians and Poor Law experts.

Sir William Chance, a well-known 'expert' in Poor Law who has written many books with a wide circulation among Guardians, defines 'destitution' as follows:

'A person may be considered destitute who has not the means of procuring the necessities of bare existence, and whose life may be endangered in consequence.'

This explanation of 'destitution' excludes many from the 'necessary

¹ Trevor, *The Two Convocations*, pp. 163-6.

² Id., p. 166, citing Cardwell's *Synodalia*, p. 690.

³ 7th Ann. Rep. of L. G. B., p. 217, quoted in Macmorran, *Poor Law Orders*, p. 20.

relief of the poor' which the Acts of Parliament require the Guardians to give. It is no wonder that many were half starved and that some were even starved to death under the Poor Law administration, notwithstanding the effective provisions made by the Poor Law, which says not a word about limiting relief to those whose lives are in danger. Statistics of 'Deaths in London from starvation or accelerated by destitution so found by Coroners' Inquest', published by the Local Government Board, will be seen in *The Justice of the Peace* for December 25th, 1915, March 4th, 1916, and November 12th, 1921.

It will be seen that the number of deaths greatly diminished since 1913. Publication of these lists ceased after 1918, but subsequently information was obtained by means of Questions in the House of Commons.¹ Some years after the lists had been published for London they were extended to the Provinces.

It must not be supposed, however, that the chief blame for the intrusion of this word 'destitute' is due to the Local Government Board. It appears from Questions 23770-1 by Sir Samuel Provis in Appendix III to the Minutes of Evidence before the Royal Commission on the Poor Laws, given on October 2nd, 1906 (p. 60), that there was very old authority for the use of the word 'destitution' as applied to the condition of those entitled to poor law relief—that probably this use went as far back as George II.

About the year 1900 public attention was called to the remarkable discrepancy between the words used by the Statute of Elizabeth and preserved in the Reforming Act of William IV, and the word employed by the Administrators. The Law was 'the Poor Law', but without any authorization whatever it had been perverted into the 'Law of the Destitute'.

In 1906 the subject was brought fully before the Royal Commission which has been mentioned (see Appendix III, pp. 41, 59, 60, 530); and the Commissioners in their Majority Report (p. 596) advised that the word 'necessitous' should take the place of 'destitute' as more accurately describing the condition of those entitled to or qualified for relief.

The Local Government Board, however, did not discard the word 'destitute' but they so explained it as to remove most of its sting; and by this time most of the local administrators of Public Assistance know that it is not to be interpreted in any narrow sense or according to its meaning in ordinary English.

¹ See *Justice of the Peace* for October 27th, 1923.

E. LORD SHAW'S ADVICE: 'LOOK AT THE STATUTE'

A powerful plea for this recourse to the Statute appears in an Address by Lord Shaw of Dumfermline to the Magistrates' Association.¹ Great stress was laid by him upon the importance of careful study of any Act of Parliament with regard to which Justices of the Peace had to adjudicate. He has been a Lord of Appeal since 1909, and for about five years had a great deal to do with the Home Office while Lord-Advocate for Scotland.² He said: 'The Lord Chancellor in the House of Lords and in the Judicial Committee of the Privy Council heads the list, but down to the humblest justice in the remotest part of England, we are all part of the Ministry of Justice'; and added 'You have troubles and duties somewhat similar to ours. You have to construe statutes'.

He then spoke very critically of the decisions of the judges, and expressed an opinion that there is less fault to be found with the Acts of Parliament than with the decisions of its interpreters.

And finally he gave what he called three 'Tips' for magistrates, 'when statutes are quoted and queer constructions are put before them:

'First, do not leave out of view the intention of the Act of Parliament, and let your criticism always be, "But if this learned gentleman who is bamboozling me with cases will come back to the Act of Parliament, I wish him to satisfy me that his argument is in accord with the intention of the statute which is under consideration".'

The second tip is, in a doubtful case prefer a construction of an Act of Parliament which will make it work to a construction which will make it stick . . .

The last tip for the construction of an Act of Parliament is not only to regard its intention and to see that it will work, but to ask yourselves also the question, 'Is it common sense?'

If anything further is needed I would only refer the reader to the graphic account of the terrible hash which the Court of Appeal made with reference to the Workman's Compensation Act 1897, given by Judge Parry in his fascinating work *The Gospel and the Law* (pp. 124-38), and he should notice how the House of Lords reversed the decisions of the Court of Appeal, and referred to the intention and object of the Act (pp. 129, 130); and construed the word 'accident' in 'its popular and ordinary sense' (p. 132), and gave effect to a sub-section of the Act which had been ignored (pp. 133, 138).

¹ Reported in *The Magistrate*, for November 1928, and there entitled 'Common Sense in Law'.

² He was also Solicitor-General for Scotland 1894-5.

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